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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

NO. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, et al.,

Respondents.

On Petition For Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit

REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION.

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Respondents' Brief seems to contain more general denials than Argument. Assuming arguendo that the issue before the Seventh Circuit was, as they contend, whether petitioner's complaint complied with Title 28 U.S.C. s. 2281, and not, as petitioner contends, whether s. 2283, supported by

Dombrowski, forbade the trial court to grant the injunctive relief prayed, the respondents must concede that the trial court refused improperly to take jurisdiction, if it can be established that the case involved the key words in s. 2281 "state statutes", "state officers", the "execution" by them of state statutes in violation of the federally protected rights of the petitioner and all Chicago Law Institute members similarly situated.

1. What "state statutes" does the amended complaint refer to?

a. The Public Law Library Act, L. 1961, p. 473, AS AMENDED (A. 9). Is not an amendment by the Illinois legislature of its own Act a "state statute"?

b. The Cook County Ordinance of December 11, 1962 (A. 6).

c. The Cook County Ordinance of November 23, 1965 (A. 13)

Respondents contend the two said Cook County Resolutions are neither "ordinances" used in some of the jurisdictional statutes, nor the "state statutes" referred to in the above s. 2283. At p. 10

of their Brief,as at p. 13 of their Motion to Dismiss the companion Jurisdictional Statement in 961, they cited Des Moines v. City Ry. in support. It held that,under Iowa law, that resolution could not be an ordinance, but only a nudge to the Ry. to tear up its tracks.

Page 31 of appellants' Reply to appellees' Motion to Dismiss proves that Cook County argued in Moseid that its Resolution of September 30,1965 was an"ordinance". If that resolution was an "ordinance", why are not the resolutions of December 11,1962 and of November 23,1965 likewise ordinances?

Pages 29-30 of the same appellants' Reply proved that,under Illinois law,Cook County is a subdivision of it,and that its enactments,being of the State's GENERAL policies,such as relate to governmental affairs, finance,taxation, the administration of justice pursuant to which the above ordinances were passed, partake of state,not local,statutes. The enactments of a city are limited and so are "local" laws.

Page 17 of the same appellants' Reply,thru page 18, deals with respondents' authorities and their

disposal. They need not be essayed again here.

The best summary of the cases dealing with the subject is to be found in 14 American Jurisprudence, Counties, at p. 183,sec. 3:

> "A county is a constituent part of the State - a wholly subordinate political subdivision or instrumentality, created and existing with a view to the policy of the state at large and serving as an agency for certain specific purposes."

Approaching the subject from the right of Action against Counties, the same volume states at p. 237, s. 78:

> "The right to sue a county is limited to cases when the legislature has ordained that it should be liable to suit. This limitation is founded upon the theory that, since there is no remedy against the state, without its consent, there may be none against the county, which forms an integral part of the sovereign", citing cases in footnote 15.

The earliest case of this Court on the subject, Maryland to the use of Washington County vs. B & O RR. Co., 3 How.(44 U.S.,1845),states at the bottom of p. 550:

> "They (counties) are a corporate body,it is true,and the members who compose it are chosen by the people of the county. But like similar corporations in every other county in the state, it (Washington County) is created for the purposes of government,"etc.

2. Are the members of the Board of Commissioners of Cook County "state officers"? They constitute the highest governing body of the County. If the County is an integral part of the sovereign State, they are "state officers", charged with the duty and responsibility of the enforcement, operation or "execution" of state statutes. Respondents' defense is so weak it must rely on Kregger, at p. 11 of their Brief and p. 14 of their Motion to Dismiss appellants' Jurisdictional Statement. That case held only that a lawyer in private practice was not a state officer which is almost self-evident, tho he is an officer of the court. Cook County justified its ouster of the Institute and its members from their workshop on the 10th floor of the Cook County Building on August 12, 1966 under authority of the 1963 amendment by the legislature of its 1961 County Law Library Act, c. 81, s. 81, and under its own implementary ordinances of September 30, 1963 and November 23, 1965. If its act was not pursuant to the enforecemnt and execution of state statutes, what was it?

3. Has the Amended Complaint set forth fully that Cook County caused the enactment of those state

statutes,as part of their conspiracy to take the assets of the Chicago Law Institute for a public use without just,or any, compensation in lieu of condemnation procedures,and in violation of the 4th,5th, and 14th(1) amendments to the U.S. Constitution which resulted in depriving the Institute and its members of their personal and prpperty rights thereunder and in the cancellation of a valid and subsisting lease,a contract thus impaired in violation of Article I,sec. 10 of the U.S. Constitution? The dismissal of the Amended Complaint admitted the ultimate facts therein,so far as well pleaded, were true. Did they present a federal question?

a. The opinion of the Seventh Circuit stated they did but held it was frivolous,(Appendix A,pp. 2a-3a), because "some" members only opposed the ouster.

b. The private foundation of the Institute,in 1857, resulted in a special charter by the State of Illinois which conferred upon the Institute and its members certain rights,franchises, privileges,immunities,and incorporeal hereditaments. It has been established that incorporeal hereditaments are property,and

and that a lease is an incorporeal hereditament. It is a contract embodying property rights, and so is a "contract" within the contract clause which Cook County, under color of state law, has impaired. (Record, Memorandum on Citation of Additional Authorities, pp. 8-10).

c. Cook County caused threats to be made and published to oust before the proceedings in 65 CH 6863 were concluded. (A. 11, 20).

d. On June 18, 1965, the Institute members rejected almost unanimously (600 against to the Institute Board members 13 votes only) its Board's recommendations to "donate" all its assets to Cook County, to permit the use of the Institute's name to an application cy pres agreeing to such gift, and to dissolve. The Institute Board, nevertheless, voted 4 to 3, on November 23, 1965 to do what it was denied power to do, in defiance of the corporation's mandate. Cook County had, on June 17, 1965, secretly appointed Allman and Cecchini, who cast 2 of the 4 votes, to the advisory committee provided for in the Public Law Library Act, 1963 amendment, c. 81, s. 81. Knowing all this, Cook County passed the November 23, 1965 ordinance. (A. 7-10).

CONCLUSION

Review should be granted.

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Of Counsel.

Respectfully submitted,
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